

NO. CV: NHH-CV19-5003875-S

NYRIEL SMITH,  
BY AND THROUGH HER MOTHER  
AND LEGAL GUARDIAN  
NICHELLE HOBBY;

: SUPERIOR COURT/  
HOUSING SESSION

: JUDICIAL DISTRICT  
: OF NEW HAVEN

MUHAWENIMANA SARA,  
BY AND THROUGH HER FATHER  
AND LEGAL GUARDIAN  
RUKARA RUGEREZA;

:

:

vs.

CITY OF NEW HAVEN, ET AL.

: JULY 19, 2019

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION  
TO MOTION FOR CLASS CERTIFICATION**

Defendants argue that Plaintiffs' proposed class cannot be certified, conflating the requirements for the different types of classes authorized by state and federal law, drawing improper distinctions between similarly situated lead-poisoned children, claiming the Named Plaintiffs no longer have standing, and casting aspersions on counsels' experience and capacities. As discussed below, not one of the arguments in opposition to Plaintiffs' motion survives even minimal scrutiny.

**I. Plaintiffs Seek Certification as a (b)(2), not a (b)(3), Class**

Plaintiffs begin their reply by noting that Defendants' brief relies almost entirely on case law regarding certification of a class under Connecticut Practice Book § 9-8(3) (classes which seek to aggregate resolution of individual claims for money damages). These cases are

inapposite. Plaintiffs seek certification of a class of lead poisoned children under Practice Book § 9-8(2), another type of class action set forth in § 9-8, each of which has a counterpart in Fed. R. Civ. Proc. 23. Practice Book § 9-8 mirrors the language of Fed. R. Civ. Proc. 23 and, for this reason, Connecticut courts follow federal law to determine if the requirements for a class under P.B. § 9-8(2) have been met. *See Town of New Hartford v. Connecticut Res. Recovery Auth.*, 291 Conn. 433, 472 (2009).

A so-called “(b)(2)” class is one in which a single injunction or declaratory judgment would provide relief to each member of the class. Practice Book § 9-8(2) permits such a class action when “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.” Fed. R. Civ. Proc. 23(b)(2) similarly explains that a (b)(2) class is appropriate when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” *See* Rules Advisory Committee Notes, 39 F.R.D. 69, 102 (1966) (commenting that “[i]llustrative [of (b)(2) cases] are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration”). Class certification is generally sought under Rule 23(b)(2) to ensure the uniform treatment of similarly situated persons, i.e., to avoid conflicting court orders issued in individual cases and to avoid the loss of a judicable controversy occasioned by the mootness of individual claims. *See Newberg on Class Actions* § 4.26 (5<sup>th</sup> ed.).

By contrast, a “(b)(3)” class (counterpart P.B. § 9-8(3)) is one in which claims for money damages by individuals are aggregated because common questions “predominate over any

questions affecting only individual members” and class resolution would be “superior to other available methods for the fair and efficient adjudication of the controversy.” Because a (b)(3) class involves money damages, notice is required to be sent to absent class members who may opt out of the class. *See* P.B. § 9-9(a)(2)(B) and Fed. R. Civ. Proc. 23(c)(2)(B).

## **II. There Is No Legal Basis to Deny Class Certification Based on Class Definition**

The Defendants argue that Plaintiffs’ proposed class cannot be defined properly, arguing that Plaintiffs seek to define a class of children aged six and older and that the CDC reference level at issue does not apply to children over six years old. Defendants also argue that Plaintiffs cannot define the proposed class with certainty given that children age into the class, age out of the class, and move out of the class. Plaintiffs’ proposed definition is fully consistent with the CDC standard and, contrary to Defendants’ assertion, there is no “definiteness” requirement for (b)(2) classes. Even if there were, the proposed class is sufficiently definite to ascertain the children to whom injunctive relief would apply.

### **A. Any “Definiteness” Requirement for Class Certification Does Not Apply to (B)(2) Classes**

Defendants claim that a “proper” class definition is an implicit requirement for class certification, citing *Parker v. Colgate-Palmolive Co.*, 2004 WL 3090652 (Conn. Super. Ct. Nov. 29, 2014). Defs’ Opp. at 4. *Colgate-Palmolive* was a CUTPA case for money damages, based on a claim that the toothpaste company misrepresented the teeth-whitening capacity of its toothpaste. Plaintiffs sought to certify a class for money damages under Practice Book § 9-8(3).<sup>1</sup> Classes certified under 9-8(3), which as explained above follows Federal Rule 23(b)(3), require

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<sup>1</sup> The Superior Court in *Colgate-Palmolive* specifically noted that the plaintiff sought no injunctive relief.

notice to the class, affording class members an opportunity to opt out of the class. *See* P.B. § 9-9(a)(2)(B). Accordingly, the class must be sufficiently definite to assure that notice is properly provided, advising absent class members of their right to opt out of the class. *See, e.g., In Re Fosomax Products Liability Litigation*, 248 F.R.D. 389, 396 (S.D.N.Y. 2008) (Identifying class members is especially important in Rule 23(b)(3) actions in order to give them the notice required by Rule 23(c)(4) so that they may decide whether to exercise their right to opt out of the class). The *Colgate-Palmolive* court, echoing this concern, held that the “class definition is critical because it identifies those *who may be entitled to notice of the pendency of the class action* as well as those who may be bound by a final judgment herein.” *Id.* at 9. (emphasis added).

The premier treatise on class actions, *Newberg on Class Actions*, opines that this requirement does not apply to (b)(2) classes because notice is not obligatory, and it is often the case that relief obtained on behalf of the class is injunctive and therefore does not require distribution to the class. *See Newberg on Class Actions* § 3:7 (5th ed.); *See also Floyd v. City of New York*, 82 Fed. R. Serv. 3d 833 (S.D.N.Y. 2012) (noting “Rule 23 does not demand ascertainability. The requirement is a judicial creation meant to ensure that class definitions are workable when members of the class will be entitled to damages or require notice for another reason.”). Indeed, as the Advisory Committee noted in adopting the language for a (b)(2) class, such classes are appropriate precisely because the proposed class is “incapable of specific enumeration.” *See Rules Advisory Committee Notes*, 39 F.R.D. 69, 102 (1966).

**B. Plaintiffs' Proposed Class Definition is Nevertheless Sufficiently Specific**

Even if definiteness is not requirement, the class definition proposed by Plaintiffs is sufficiently specific for a court to enforce compliance with any injunctive relief granted to the class. First, the proposed class consists of children who fall within a definition set forth by the CDC. This class is: all children under the age of six living in New Haven, Connecticut who are under six years old and either presently have, or will in the future have, EBLs in excess of five  $\mu\text{g}/\text{dL}$  while under the age of six. Plaintiffs never sought to propose a class to include children over six years old.<sup>2</sup> Moreover, there is no problem to define the class with certainty. The proposed class is the same group of children whom the City previously identified for a comprehensive investigation through its Maven system, *i.e.*, children living in New Haven, under the age of six, with EBLs in excess of five  $\mu\text{g}/\text{dL}$ . See Transcript of Hearing on Order to Show Cause June 7, 2019, Testimony of Jomika Bogan at pp. 146-49. Defendants never had any issue with the definition when they were properly applying the City ordinance prior to November 2018. They used birthdates and addresses to determine if the child was less than 6 years of age and whether the child lived in New Haven. The children of the proposed class are not any more difficult to define than the group of children for whom the city legislature sought to protect from lead poisoning.

**III. Joinder of the Proposed Class is Indisputably Impracticable**

Defendants first dispute that joinder is impracticable, claiming that Plaintiffs have not established the numerosity requirement. Defendants argue that Plaintiffs have provided an

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<sup>2</sup> In Plaintiffs' Motion for Class Certification, the class was proposed as children "six years old and younger." Realizing the ambiguity in this definition, Plaintiffs request that the class be certified as children "under six years old."

improper proffer of proof, stating the Plaintiffs provided “only conclusory allegations that joinder is impracticable and speculation about the size of the class.” Defs’ Opp. at 6-8. As stated in Plaintiffs’ initial memorandum, “courts have not required evidence of exact class size or identify of class members to meet the numerosity requirement for a (b)(2) class.” *See Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). In the Second Circuit, “numerosity is presumed at a level of 40 members.” *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). There is “no magic minimum number” to establish numerosity. *Gortat v. Capala Bros.*, 949 F. Supp. 2d 374, 383 (E.D.N.Y. 2013), *aff’d sub nom.*, *Gortat v. Capala Bros., Inc.*, 568 F. App’x 78 (2d Cir. 2014) (quoting *Deen v. New Sch. Univ.*, No. 05-CV-7174, 2008 WL 331366, at \*2 (S.D.N.Y. Feb. 4, 2008) ). Indeed, the uncertainty about the number of class members is a basis for certifying a (b)(2) class as reflected in Rules Advisory Committee Notes. *See* 39 F.R.D. 69, 102 (1966)

Moreover, the statistics relied on by Plaintiffs are hardly conclusory statements from outdated data. Plaintiffs draw their estimates from the State of Connecticut Department of Public Health Lead and Healthy Homes Program, Childhood Lead Poisoning Prevention and Control Annual Disease Surveillance Reports (last published May 9, 2018). This report sets forth the exact number of New Haven children with EBLs between 5 and 19  $\mu\text{g/dL}$  for the most recent year that such data is available (stating that 314 children in New Haven had EBLs between 5 and 19  $\mu\text{g/dL}$  in 2016). *See* [https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental\\_health/lead/Surveillance\\_reports/CY-2016-Annual-Lead-Surveillance-Report\\_-\\_Final-6-11-2018-maps-updated-11-27.pdf?la=en](https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/lead/Surveillance_reports/CY-2016-Annual-Lead-Surveillance-Report_-_Final-6-11-2018-maps-updated-11-27.pdf?la=en). (*See* Exhibit A). The data published in 2018 is consistent with data for the prior years which shows some decline from year to year but overall numbers in the hundreds. *See* Exhibit B May 2017 Report (stating that

339 children in New Haven had EBLs between 5 and 19  $\mu\text{g/dL}$  in 2015); June 2016 Report (stating that 377 children in New Haven had EBLs between 5 and 19  $\mu\text{g/dL}$  in 2014); April 2015 (stating that 405 children in New Haven had EBLs between 5 and 19  $\mu\text{g/dL}$  in 2013) (attached as Exhibit B).

Defendants, who seek to *deny* class certification based Plaintiffs' inability to provide exact numbers of the children in the proposed class are the only entity, other than the State Department of Public Health, who know the exact numbers. The State collects data of all pediatric lead blood testing as required by state law, and this data is shared with the Defendants also under the requirements of state law. To date, Defendants have refused to share the data, and such data may not be shared by DPH under state medical confidentiality laws (*i.e.*, Conn. Gen. Stat. §§ 19a-25 and 19a-215). If there is a legitimate concern that the proposed class is not sufficiently numerous, then the Defendants should make the data available at court hearing.

Second, Defendants dispute the impracticability of joinder by asserting that all members of the proposed class could be "identified on a case-by-case basis" and are "centrally located." Defs' Opp. at 7. This statement is preposterous. The children of the proposed class live in distinct neighborhoods in a large city, with little interaction across neighborhoods and communities. Moreover, Plaintiffs' counsel's experience with the Named Plaintiffs, representing and advising the parents of more than fifteen children with lead poisoning, and working with thousands of other legal aid clients, teaches that many of the parents of the children in the proposed class suffer from numerous barriers to exercising the rights of their individual children. These barriers include the ever present stress of living in poverty, lack of transportation, lack of access to the legal system, non-fluency in English, and inadequate education, all causing them to be unlikely to be aware of their children's rights, much less able to

exercise those rights. The determination of the impracticability of joinder requires consideration of factors other than mere numbers and the speculative possibility of 300 children litigating their rights under state and local law. *See Robidoux v. Celani*, 987 F.2d at 936, *citing Demarco v. Edens*, 390 F.2d 836, 845 (2d Cir. 1968) (“Relevant considerations include judicial economy arising from avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief that would involve future class members.”).

Defendants further claim that Plaintiffs fail to show that parents of lead poisoned children in the proposed class are interested in pursuing the litigation. There is no requirement for absent class members in a (b)(2) to show an interest in litigation. *See Newberg on Class Actions* § 4.28 (5<sup>th</sup> ed.) (“While Rule 23(b)(2)’s act requirement focuses in on the objective question of whether the proposed class consists of those affected by the challenged policy, occasionally, courts address a seemingly related subjective question: namely, whether everyone in the class is interested in challenging the policy at issue. This inquiry is simply irrelevant to the analysis of whether the case fits within (b)(2). The act requirement is objective, not subjective.”). Further, it is significant to note two things. First, whether or not a parent is “interested” does not diminish the child’s right to governmental protection from permanent cognitive and neurological harm. Second, Plaintiffs’ counsel has worked with the parents of more than fifteen children with EBLs in excess of five µg/dL. In each of these cases, the parents were more than “interested”; they were desperate to have their apartments investigated and to have lead abated to protect their lead-poisoned children.

In addition to the above, joinder is indisputably impracticable if for no other reason than that the Court has already achieved orders for inspections and abatement in five individual cases



involving Defendants' failure to comply with state and local lead laws. Continuing with such piecemeal litigation would place an unreasonable strain on judicial resources. Joinder is also impractical because the proposed class definition includes children under six who may in the future become lead poisoned.<sup>3</sup> Courts generally state that the numerosity requirements are relaxed due to the difficulty in determining the number and identity of these future claimants; accordingly, the inclusion of future class members is also a basis for determining impracticability and not a basis to deny class certification. *See, e.g., Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014) ("Unforeseen members will join the class at indeterminate points in the future, making joinder *impossible*.").

#### **IV. Plaintiffs' Case Meets the Commonality Requirement of Section 9-7 and Rule 23(a)**

Defendants argue that Plaintiffs do not meet the commonality requirement of P.B. § 9-7 and Fed. R. Civ. Proc. 23(a). Defs' Opp. at 8-9. Defendants' argument is premised on a faulty claim that plaintiffs seek individualized injunctive relief for each member of the plaintiff class requiring "mini trials" for each member. In contrast, Plaintiffs seek one injunction, applicable to all class members based on common issues of law and fact. Plaintiffs' injunction request is spelled out clearly in their Complaint, to wit, one preliminary and permanent injunction requiring Defendants to comply with City law and immediately inspect the homes of class members to determine all sources of lead in the interior, exterior, and soil; send abatement orders when lead hazards are found; and ensure that such orders are complied with by ensuring abatement is completed in a timely fashion. *See* Claim for Relief 4. Similarly, Claim for Relief

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<sup>3</sup> Future class members include children yet to be born and already born children who will become poisoned while under the age of six.

5 seeks one preliminary and permanent injunction regarding the sending of a form notice to class members. The relief sought is premised on common questions of law and fact outlined in Plaintiffs' initial memorandum (and in part answered by the Court's Memorandum of Decision on the Named Plaintiffs' request for injunctive relief to the extent the Court found the existence of a new lead policy which violated City ordinance requirements to determine and order abatement of all lead poisoning hazards found in homes for all children under 6 years of age with EBLs in excess of five  $\mu\text{g/dL}$ ). Contrary to Defendants' spurious arguments, nothing in City law requires the Court to determine if a child was contaminated in their home or was exposed to lead while living outside the City before issuing injunctive relief. City law mandates inspections solely based on the child's blood lead level, the child's age, and the child's residence in the City.

**V. The Named Plaintiffs Are Proper Representatives of the Proposed Class.**

**A. Because Named Plaintiffs Had Standing to Litigate their Claims at the Time the Motion to Certify was Filed, They Retain Standing to Represent the Class**

Defendants argue that Plaintiffs' claims are not typical, and that they are not adequate class representatives, because they no longer have standing given that their claims have been mooted – one by the Court's preliminary injunction and the other by the plaintiff family moving to another home. Defs' Opp. at 10-14. Notably, Defendants do not dispute that, at the time the Named Plaintiffs filed their complaint and moved for class certification, Named Plaintiffs alleged a direct and current injury specifically attributable to the City's change in its lead policy in violation of the City ordinance. This was an injury that was capable of being addressed through injunctive relief and, indeed, in the case of Nyriel Smith, it was, at least partially, addressed by the Court's order for preliminary injunctive relief.

Even if both Named Plaintiffs' claims were now moot, the U.S. Supreme Court, interpreting the parallel class requirements of Rule 23, has definitively held that class certification preserves the merits of the controversy for adjudication. *See County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). "[T]ermination of a class representative's claim does not moot the claims of the unnamed members of the class." *McLaughlin* at 51-52, *citing Gerstein v. Pugh*, 420 U.S. 103, 110-111 n. 11 (1975), *in turn citing Sosna v. Illinois*, 419 U.S. 393 (1975). A decision on class certification relates back to the date of the filing of the class motion when the Named Plaintiffs indisputably had both standing and live claims. *See id.* ("[The 'relation back' doctrine is properly invoked to preserve the merits of the case for judicial resolution.>"). Accordingly, the Defendants' arguments about the change in the Named Plaintiffs' circumstances could never defeat class certification. Simply having their individual situations resolved does not make the claims of the Named Plaintiffs, set forth in their Complaint and Motion for Class Certification, 'atypical,' nor does it make Nyriel Smith and Muhawenimana Sara inadequate class representatives. *See Comer v. Cisneros*, 30 F.3d 775, 796-97 (2d Cir. 1994).

**B. The Claims of Nyriel Smith Are Not Moot, Establishing Her Current Standing to Litigate Both Her Individual Claims and Class Claims**

Defendants argue that Named Plaintiff Nyriel Smith does not have standing because she no longer has a viable claim and cannot currently prove an ascertainable loss, stating "[t]he Court has ruled already in Plaintiffs' favor and awarded them the injunctive relief they were seeking" and that "[t]he City has complied with the injunction." Defs' Opp. at 13-14.

Defendants' assertion is false for two reasons. First, the Court ruling on injunctive relief did not provide the complete relief sought by Nyriel Smith as set forth in the Complaint. The

preliminary injunctive relief granted was for a full lead hazards inspection and an order to the landlord to abate any lead hazards found. Plaintiffs' Complaint seeks additional, critically important, relief, including that the Court order that Defendants ensure that their orders are complied with in a timely fashion. The order sent to the landlord imposes a timeline drawn from City and state law, which includes a requirement that a notice of toxic levels of lead be posted in common areas within two working day and a written lead abatement plan be submitted within five days. *See* Exhibit C. The ordinance further requires that the abatement work begin within seven days and be complete in a reasonable time period. *See* New Haven City Code § 16-66. To date, no warning notices have been posted at the premises and no lead abatement plan has been submitted. The law requires the City to ensure these protections for Nyriel Smith. These deficiencies in the City's monitoring of the abatement process are causing Nyriel further irreparable harm, requiring additional judicial relief to protect her from lead poisoning from lead hazards at her apartment.

Second, Defendants have failed to comply with the temporary injunction order itself. The Court ordered Defendants to send a notice to Nyriel's mother, providing her with specific, state-mandated information. Defendants have provided no such letter. The Court also ordered a full lead hazards inspection and an order of abatement. To date, the Health Department has neither: (1) conducted a full lead hazards inspection, nor (2) determined the lead poisoning hazards at the unit. Instead, Defendants have issued orders to the landlord to abate defective lead paint that is causing health hazards to Nyriel, while simultaneously making conflicting public statements that no lead poisoning hazards exist at the unit.

As set forth at the preliminary injunction hearing, the area of greatest concern for lead poisoning hazards at Nyriel's home is the first floor exterior front porch that the child and her

mother go in and out of to enter and depart their apartment. Nyriel is old enough to walk and she walks through this area multiple times a day. The photos entered into evidence established that there was obvious chipping and flaking old paint on the exterior front porch columns, railings, and door frames. *See Exhibit D (Hearing on Order to Show Cause June 7, 2019, Pl. Exs. 2, 3, 3, 4, 5).* The testimony of the Health Department, and thus the judicial order for an inspection, was clear that a proper lead hazards inspection would include XRF analysis of the interior of the unit, the common area, and the exterior of the unit, dust wipes of interior and exterior floors, window sills, and other horizontal surfaces, and soil samples of any bare soil. *See Transcript of Hearing on Order to Show Cause June 7, 2019, Testimony of Jomika Bogan at pp. 150-53.*

The Health Department conducted an inspection on June 26, 2019 which consisted of XRF analysis of the interior of the unit, the interior common area, and the exterior of the unit. This XRF analysis found lead paint in all of these locations. The analysis verified the concern that the chipping and flaking paint on the first floor exterior front porch was lead paint. *See Exhibit C.* On June 26, 2019, the Health Department also did dust wipes of 27 locations on the interior of the unit and the interior common areas. These dust wipes did not include the exterior first floor front porch. *See Exhibit E.* On July 3, after the abatement order was sent to the landlord, the Health Department conducted further dust wipes, including the first floor rear enclosed porch floor, first floor rear landing, second floor front balcony porch floor, the second floor rear balcony porch floor, and the third floor rear landing floor. *See Exhibit F.* These dust wipes still did not include the area of greatest lead hazards concern, the exterior first floor front porch floor.

At the same time that the Health Department has failed to do dust wipes of the area of greatest concern, Defendant Mayor Harp has been issuing conflicting statements regarding the Defendants' determination of lead poisoning hazards to Nyriel. Defendant Mayor Harp held a press conference at City Hall on July 1, 2019, in which she announced, in the presence of Defendants' counsel, that no lead accessible to children was found inside Nyriel's apartment, and that Nyriel's lead exposure must have come from somewhere other than the home. *See* Exhibit G. The next day, July 2, 2019, the City and its Department of Health issued an order to the landlord which stated that "[the] inspection revealed the presence of toxic levels of lead in paint (intact and defective)" in 41 locations (13 locations inside the apartment, 6 locations in the interior common areas, 9 locations on the exterior first floor front porch, 1 location on the first floor back porch, 7 locations on the second floor balcony porch, 4 locations on the second floor back balcony porch, and the garage door). *See* Exhibit C (the front of the house is referred to as "Side A", the back of the house is "Side C"). The order went on to state: "The Director of Health has determined that the presence of such lead-based paint and chipped and flaking paint constitutes health hazards. Since there are one or more children with an elevated blood lead level residing in the premises, the aforementioned conditions constitute grounds for issuance of [an] Order . . . to remedy these conditions" and stating "[f]ailure to comply with the above stated orders will subject you to prosecution." *See id.*

As recently as July 16, 2019, in a press release issued in conjunction with the filing of Defendants' Opposition to the Class Certification, Defendant Mayor Harp stated: "[A]lthough lead paint was found on the premises where the named plaintiff in the Legal Assistance Association's lawsuit lives, all such paint was intact. . . . No defective lead-based paint was found in the apartment of the named plaintiff." *See* Exhibit H. This statement mirrors the statement made in

Defendants' brief that: "As to Smith, the results of the City's lead inspection indicated, contrary to the Court's finding in its June 17, 2019 Memorandum of Decision, that there was no peeling and chipping lead-based paint inside Smith's apartment." *See* Defs' Opp. at 14 n.3.<sup>4</sup> Contrary to these statements, the truth of the matter is: (1) the XRF report states that defective lead paint was found inside the unit, and (2) the evidence at the hearing focused on lead hazards on the exterior first floor front porch, which was found by XRF analysis to contain lead paint and to this date has not been dust wiped for the active lead hazard caused by chipping and flaking lead paint.

Because the Health Department has not conducted a full lead hazards inspection, with dust wipes of the main location of lead hazards concern, and because Defendants have yet to determine all the lead poisoning hazards at the unit, issuing orders to the landlord to abate defective lead paint hazards while making simultaneously conflicting public statements that no lead poisoning hazards exists at 105 Lombard Street, Nyriel Smith's claims are by no means moot. The two year old still awaits a clear determination of the lead hazards at her unit, notices to be posted in the common areas of her home, the submission of a lead abatement plan, and commencement of lead abatement. As such, Named Plaintiff Nyriel Smith still possesses the same interest and suffers the same injury as the proposed class members.

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<sup>4</sup> Defendants' brief also contains an unsubstantiated statement of fact that "Smith's mother also informed the lead inspector that her child does not play or spend any time in any area of the property where she might access lead hazards." *See* Defs' Opp. at 14 n.3. Defendants' counsel have provided Plaintiffs' counsel with the full inspection report which contains no documentation of any such statement. Moreover, the order to the landlord states that the paint on the front porch is accessible and dangerous to the child, and Nyriel's mother denies ever telling the inspector that her child does not spend time on the front porch which is the entrance and exit to their unit.

C. Plaintiffs' Counsel is Fully Qualified to Represent the Proposed Class

Defendants assert that Plaintiffs' counsel has not demonstrated they are qualified to represent the plaintiff class largely because counsel has not submitted an affidavit attesting to their qualifications. Defs' Opp. at 15. Attached hereto are counsels' affidavits attesting to their qualifications.<sup>5</sup> See Exhibits I and J. However, beyond counsels' impressive credentials is the fact they have not only litigated the instant case through two removals to federal court and through a successful preliminary injunction hearing, but have also obtained judicial orders in *five prior cases* against the City on behalf of individual lead poisoned children. At this point, counsel provides an unparalleled combination of expertise in class action experience and knowledge of city lead laws, the workings of the City of Health Department, and the City's lead policies. Moreover, New Haven Legal Assistance Association has the resources to conduct any additional depositions required, as well as to hire an expert if one becomes necessary.

VI. The Fact that Another Governmental Entity Has a Separate Legal Obligation To Test Children Does Not Defeat Class Certification as a "(b)(2)" Class

Finally, Defendants argue that their actions do not apply uniformly to all members of the class because the City policy at issue (*i.e.*, the decision to conduct lead inspections for children with EBLs above twenty  $\mu\text{g}/\text{dL}$ ) does not hurt children living in public housing because the Housing Authority of the City of New Haven has a separate obligation under federal law to provide full lead protections, including lead inspections, for all children in federally-subsidized housing with an EBL at or above five  $\mu\text{g}/\text{dL}$ . Defs' Opp. at 16. While a (b)(2) class looks for

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<sup>5</sup> Counsel Shelley White notes she can recall no case in the last thirty years in which the the qualifications of New Haven Legal Assistance to represent a proposed class has even been questioned by opposing counsel or the court, much less held to be a basis to deny class certification.



grounds that “apply generally” to the class, it is well-settled in federal law that the defendant's conduct described in the complaint need not be directed or damaging to every member of the class. *See, e.g., Latino Officers Ass'n City of New York v. City of New York*, 209 F.R.D. 79, 92 (S.D.N.Y. 2002) (certifying a 23(b)(2) class where “the actions complained of allegedly were taken on grounds generally applicable to the proposed class, even if not every member actually felt the brunt of the actions”). The framers of Rule 23 stated that: “[a]ction or inaction is directed to a class within the meaning of this subdivision even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class.” Rules Advisory Committee Notes, 39 F.R.D. 69, 102 (1966).

The fact that the Housing Authority has a legal obligation under federal law to conduct inspection for certain members of the class who also are entitled to inspections under City law does not relieve the Defendants of the City law requirement to inspect the same children's homes. There may one day be a system in which the City chooses to rely on the Housing Authority to conduct inspections on behalf of the Health Department, with the Health Department then adopting the Housing Authority's inspection results as Health Department results. But even with such a system in place, the Health Department would still have the obligation to ensure that the Housing Authority conducted the inspection on the Health Department's behalf and that such inspection satisfied city law requirements. The city law is clear that all children under six years of age with EBLs of five µg/dL or above are entitled to full protections under City law, regardless of any parallel federal protections in place for such child.

Rule 23(b)(2)'s act requirement properly focuses on the single question of whether Defendants maintain a policy that affects a group of persons similar to those proposed to

constitute the class in the present case. In this case, Defendants maintain a policy of not inspecting homes of children with EBLs less than twenty µg/dL. The fact that some of the class will have their units inspected by another governmental entity does not undo the fact that this policy applies to all children under six years of age, living in New Haven.

### **CONCLUSION**

This case is a paradigmatic (b)(2) class. Plaintiffs challenge a policy of the City of New Haven which they allege violations of state and local law and which applies across the board to all members of the proposed class. Plaintiffs appreciate that they must both plead and prove the existence of the Rule 23 requirements. *See Wal-Mart Stores v. Dukes, Inc.*, 564 U.S. 338, 351 n.6 (2011)(citing *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 177-78 (1974)) and that the Court must perform a "rigorous" analysis to determine whether the Rule 23(a) prerequisites are satisfied). That being said, Plaintiffs have more than met their burden with respect to these requirements. The class definition is sufficiently specific to enable the Court to determine who would be within the scope of any injunctive relief granted, and joinder of the putative members would be impracticable for obvious and indisputable reasons. The common questions of law and the typicality of the claims of the Named Plaintiffs are established by their Complaint. The adequacy of class counsel is resolved by the attached affidavits. The entire purpose of filing this case as a class action is to promote judicial economy and ensure that the claims of all the children impacted by the Defendants' unlawful policies remain viable after the claims of the Named Plaintiffs are resolved.

Wherefore, the Named Plaintiffs hereby respectfully request that the Court grant class certification and address the issues in the Complaint systemically, protecting the rights of all similarly situated children in the City of New Haven.

**THE PLAINTIFFS,  
NYRIEL SMITH  
MUHAWENIMANA SARA**

**BY:** s/101201  
Shelley White  
Juris No. 101201  
Amy Marx  
Juris No. 419776  
Their Attorneys  
New Haven Legal Assistance  
205 Orange Street  
New Haven, CT 06510  
203-946-4811  
swhite@nhlegal.org  
amarx@nhlegal.org

**CERTIFICATION**

I hereby certify that a copy of the foregoing Reply Brief was emailed and mailed to the following on July 19, 2019:

Andrew A. Cohen, Esq.  
Winnick Ruben Hoffnung Peabody & Mendel, LLC  
110 Whitney Avenue  
New Haven, CT 06510.

Nancy Mendel, Esq.  
Winnick Ruben Hoffnung Peabody & Mendel, LLC  
110 Whitney Avenue  
New Haven, CT 06510

Roderick Williams, Esq.  
Deputy Corporate Counsel  
Office of Corporation Counsel  
City of New Haven  
165 Church Street, 4<sup>th</sup> Floor  
New Haven, CT 06510

Elizabeth Acee, Esq.  
LeclairRyan  
545 Long Wharf Drive, Ninth Floor  
New Haven, CT 06511

s/101201

Shelley A. White  
Commissioner of the Superior Court



# EXHIBIT A



## Childhood Lead Poisoning Prevention and Control

### *2016 Annual Disease Surveillance Report*

# State of Connecticut Department of Public Health Lead and Healthy Homes Program

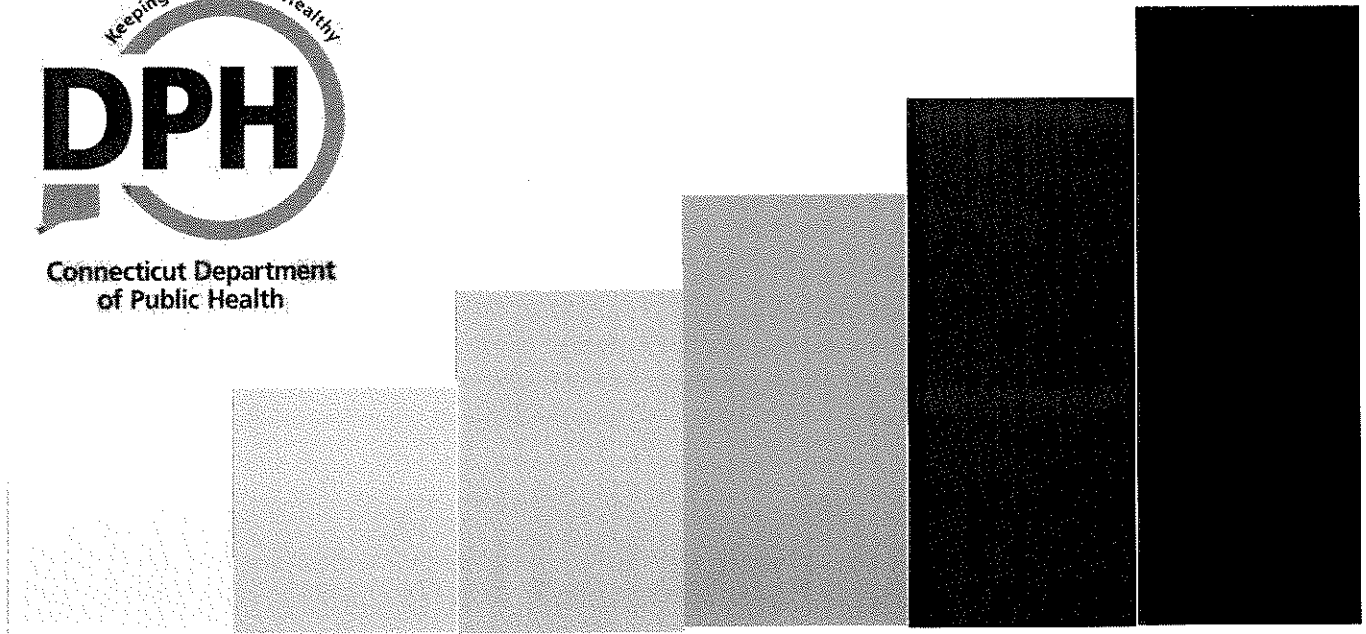
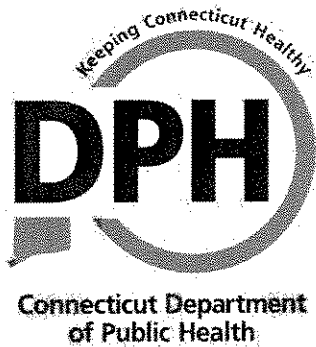
This report describes the rates of childhood lead testing by pediatricians, the rates of childhood lead poisoning for children under the age of six, the identification and frequency of lead hazards in residential properties, and the effectiveness of the actions taken by local health departments and districts in response to reported cases of severe childhood lead poisoning.

Published May 9, 2018

Numbers and Percents of Confirmed Blood Lead Levels among Children Aged Less Than Six Years with a Confirmed Lead Test													
CY 2016 Data ( <b>&lt;6 years old</b> )			Number of Children with Confirmed Test	0-4 µg/dL		Cumulative Statistics							
						≥ 5 µg/dL		≥ 10 µg/dL		≥ 15 µg/dL		≥ 20 µg/dL	
			Number	%	Number	%	Number	%	Number	%	Number	%	
81	Middlebury	105	103	98.1	2	1.9	1	1.0	0	0.0	0	0.0	
82	Middlefield	61	61	100.0	0	0.0	0	0.0	0	0.0	0	0.0	
83	Middletown	912	899	98.6	13	1.4	2	0.2	1	0.1	1	0.1	
84	Milford	749	743	99.2	6	0.8	0	0.0	0	0.0	0	0.0	
85	Monroe	290	289	99.7	1	0.3	0	0.0	0	0.0	0	0.0	
86	Montville	262	258	98.5	4	1.5	1	0.4	0	0.0	0	0.0	
87	Morris	23	23	100.0	0	0.0	0	0.0	0	0.0	0	0.0	
88	Naugatuck	689	680	98.7	9	1.3	1	0.1	0	0.0	0	0.0	
89	New Britain	2675	2606	97.4	69	2.6	22	0.8	16	0.6	6	0.2	
90	New Canaan	336	333	99.1	3	0.9	1	0.3	1	0.3	0	0.0	
91	New Fairfield	188	188	100.0	0	0.0	0	0.0	0	0.0	0	0.0	
92	New Hartford	81	80	98.8	1	1.2	1	1.2	0	0.0	0	0.0	
93	New Haven	4108	3794	92.4	314	7.6	67	1.6	21	0.5	12	0.3	
94	New London	688	654	95.1	34	4.9	9	1.3	2	0.3	1	0.1	
95	New Milford	426	422	99.1	4	0.9	0	0.0	0	0.0	0	0.0	
96	Newington	386	385	99.7	1	0.3	0	0.0	0	0.0	0	0.0	
97	Newtown	264	262	99.2	2	0.8	1	0.4	0	0.0	0	0.0	
98	Norfolk	15	14	93.3	1	6.7	0	0.0	0	0.0	0	0.0	
99	North Branford	199	199	100.0	0	0.0	0	0.0	0	0.0	0	0.0	
100	North Canaan	36	34	94.4	2	5.6	0	0.0	0	0.0	0	0.0	
101	North Haven	320	319	99.7	1	0.3	1	0.3	0	0.0	0	0.0	
102	North Stonington	80	80	100.0	0	0.0	0	0.0	0	0.0	0	0.0	
103	Norwalk	2046	2013	98.4	33	1.6	7	0.3	3	0.1	1	0.0	
104	Norwich	841	787	93.6	54	6.4	15	1.8	10	1.2	8	1.0	
105	Old Lyme	84	84	100.0	0	0.0	0	0.0	0	0.0	0	0.0	



# EXHIBIT B



# Childhood Lead Poisoning Prevention and Control

## *2015 Annual Disease Surveillance Report*

### State of Connecticut Department of Public Health Lead and Healthy Homes Program

This report describes the rates of childhood lead testing by pediatricians, the rates of childhood lead poisoning for children under the age of six, the identification and frequency of lead hazards in residential properties, and the effectiveness of the actions taken by local health departments and districts in response to reported cases of severe childhood lead poisoning.

Published May 9, 2017

Numbers and Percents of Confirmed Blood Lead Levels among Children Aged Less Than Six Years with a Confirmed Lead Test													
CY 2015 Data ( <b>&lt;6 years old</b> )	Number of Children with Confirmed Test	0-4 µg/dL		Cumulative Statistics									
		Number	%	≥ 5 µg/dL		≥ 10 µg/dL		≥ 15 µg/dL		≥ 20 µg/dL			
				Number	%	Number	%	Number	%	Number	%		
82	MIDDLEFIELD	48	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
83	MIDDLETOWN	906	97.8	886	2.2	7	0.8	2	0.2	1	0.1		
84	MILFORD	920	99.3	914	0.7	1	0.1	1	0.1	0	0.0		
85	MONROE	295	99.7	294	0.3	0	0.0	0	0.0	0	0.0		
86	MONTVILLE	269	98.9	266	1.1	0	0.0	0	0.0	0	0.0		
87	MORRIS	31	100.0	31	0.0	0	0.0	0	0.0	0	0.0		
88	NAUGATUCK	722	97.1	701	2.9	3	0.4	2	0.3	2	0.3		
89	NEW BRITAIN	2634	97.3	2564	2.6	19	0.7	10	0.4	9	0.3		
90	NEW CANAAN	338	99.7	337	0.3	1	0.3	0	0.0	0	0.0		
91	NEW FAIRFIELD	197	100.0	197	0.0	0	0.0	0	0.0	0	0.0		
92	NEW HARTFORD	70	100.0	70	0.0	0	0.0	0	0.0	0	0.0		
93	NEW HAVEN	4398	92.3	4059	7.6	93	2.1	37	0.8	19	0.4		
94	NEW LONDON	815	95.3	777	4.6	5	0.6	2	0.2	2	0.2		
95	NEW MILFORD	439	97.5	428	2.5	2	0.5	0	0.0	0	0.0		
96	NEWINGTON	394	99.5	392	0.5	0	0.0	0	0.0	0	0.0		
97	NEWTOWN	274	99.3	272	0.7	0	0.0	0	0.0	0	0.0		
98	NORFOLK	17	100.0	17	0.0	0	0.0	0	0.0	0	0.0		
99	NORTH BRANFORD	196	100.0	196	0.0	0	0.0	0	0.0	0	0.0		
100	NORTH CANAAN	32	87.5	28	12	1	3.1	0	0.0	0	0.0		
101	NORTH HAVEN	321	98.4	316	1.6	0	0.0	0	0.0	0	0.0		
102	NORTH STONINGTON	67	100.0	67	0.0	0	0.0	0	0.0	0	0.0		
103	NORWALK	2217	98.5	2183	1.5	10	0.5	8	0.4	3	0.1		
104	NORWICH	929	94.4	877	5.6	11	1.2	3	0.3	3	0.3		
105	OLD LYME	84	98.8	83	1.2	0	0.0	0	0.0	0	0.0		
106	OLD SAYBROOK	118	100.0	118	0.0	0	0.0	0	0.0	0	0.0		



## Childhood Lead Poisoning Prevention and Control

### *2014 Annual Disease Surveillance Report*

# State of Connecticut Department of Public Health Lead and Healthy Homes Program

This report describes the rates of childhood lead testing by pediatricians, the rates of childhood lead poisoning for children under the age of six, the identification and frequency of lead hazards in residential properties, and the effectiveness of the actions taken by local health departments and districts in response to reported cases of severe childhood lead poisoning.

Published June 9, 2016

# Numbers and Percentages of New Confirmed Blood Lead Levels

CY 2014 Data		Number of Children with BLL $\geq 5$ $\mu\text{g/dL}$ For the First Time	Total # Children Screened with No Previous BLL of $\geq 5$ $\mu\text{g/dL}$	$\geq 5$ $\mu\text{g/dL}$ Incidence (%)	Number of Children with BLL $\geq 10$ $\mu\text{g/dL}$ For the First Time	Total # Children Screened with No Previous BLL of $\geq 10$ $\mu\text{g/dL}$	$\geq 10$ $\mu\text{g/dL}$ Incidence (%)	Number of Children with BLL $\geq 15$ $\mu\text{g/dL}$ For the First Time	Total # Children Screened with No Previous BLL of $\geq 15$ $\mu\text{g/dL}$	$\geq 15$ $\mu\text{g/dL}$ Incidence (%)	Number of Children with BLL $\geq 20$ $\mu\text{g/dL}$ For the First Time	Total # Children Screened with No Previous BLL of $\geq 20$ $\mu\text{g/dL}$	$\geq 20$ $\mu\text{g/dL}$ Incidence (%)
72	LEDYARD	2	272	0.7	0	273	0	0	273	0	0	273	0
73	LISBON	0	31	0	0	31	0	0	31	0	0	31	0
74	LITCHFIELD	2	90	2.2	0	92	0	0	92	0	0	92	0
75	LYME	1	9	11.1	0	9	0	0	10	0	0	10	0
76	MADISON	1	169	0.6	0	169	0	0	169	0	0	169	0
77	MANCHESTER	25	1292	1.9	6	1305	0.5	3	1312	0.2	3	1315	0.2
78	MANSFIELD	1	132	0.8	0	132	0	0	132	0	0	132	0
79	MARLBOROUGH	0	56	0	0	56	0	0	56	0	0	56	0
80	MERIDEN	71	1938	3.7	15	2025	0.7	7	2040	0.3	6	2052	0.3
81	MIDDLEBURY	0	121	0	0	122	0	0	122	0	0	122	0
82	MIDDLEFIELD	0	57	0	0	57	0	0	57	0	0	57	0
83	MIDDLETOWN	15	956	1.6	2	971	0.2	1	975	0.1	1	976	0.1
84	MILFORD	5	885	0.6	0	890	0	0	891	0	0	892	0
85	MONROE	0	265	0	0	265	0	0	265	0	0	265	0
86	MONTVILLE	3	303	1	1	310	0.3	1	310	0.3	0	311	0
87	MORRIS	1	29	3.4	0	29	0	0	29	0	0	29	0
88	NAUGATUCK	7	661	1.1	2	672	0.3	1	680	0.1	0	681	0
89	NEW BRITAIN	60	2485	2.4	11	2550	0.4	4	2562	0.2	1	2567	0
90	NEW CANAAN	2	342	0.6	0	342	0	0	342	0	0	342	0
91	NEW FAIRFIELD	1	192	0.5	1	192	0.5	0	192	0	0	192	0
92	NEW HARTFORD	3	81	3.7	0	81	0	0	82	0	0	82	0
93	NEW HAVEN	233	4193	5.6	64	4403	1.5	24	4477	0.5	7	4503	0.2
94	NEW LONDON	24	660	3.6	6	685	0.9	3	695	0.4	0	695	0
95	NEW MILFORD	9	460	2	1	461	0.2	1	461	0.2	0	462	0
96	NEWINGTON	2	317	0.6	1	319	0.3	0	319	0	0	319	0
97	NEWTOWN	2	294	0.7	0	296	0	0	297	0	0	297	0



## Childhood Lead Poisoning Prevention and Control

### *2013 Annual Disease Surveillance Report*

# State of Connecticut Department of Public Health Lead and Healthy Homes Program

This report describes the rates of childhood lead testing by pediatricians, the rates of childhood lead poisoning for children under the age of six, the identification and frequency of lead hazards in residential properties, and the effectiveness of the actions taken by local health departments and districts in response to reported cases of severe childhood lead poisoning.

Published April 27, 2015



**Table 2. By Town Prevalence - Children under 6 Years of Age**

CY 2013 Data (<6 years old)		Numbers and Percents of Confirmed Blood Lead Levels among Children Aged Less Than Six Years with a Confirmed Lead Test											
		Number of Children with Confirmed Test	0-4 µg/dL		≥ 5 µg/dL			≥ 10 µg/dL			≥ 15 µg/dL		
					≥ 5 µg/dL		%	≥ 10 µg/dL		%	≥ 15 µg/dL		%
					Number	%		Number	%		Number	%	
86	MONTVILLE	311	306	98.4	5	1.6	0.3	1	0.3	1	0.3	1	0.3
87	MORRIS	28	28	100	0	0	0	0	0	0	0	0	0
88	NAUGATUCK	635	616	97	19	3	1.1	7	1.1	1	0.2	0	0
89	NEW BRITAIN	2,748	2,660	96.8	88	3.2	0.5	15	0.5	8	0.3	4	0.1
90	NEW CANAAN	366	365	99.7	1	0.3	0.3	1	0.3	1	0.3	0	0
91	NEW FAIRFIELD	179	178	99.4	1	0.6	0	0	0	0	0	0	0
92	NEW HARTFORD	76	75	98.7	1	1.3	0	0	0	0	0	0	0
93	NEW HAVEN	4,519	4,114	91	405	9	2	91	2	36	0.8	20	0.4
94	NEW LONDON	726	689	94.9	37	5.1	0.8	6	0.8	1	0.1	1	0.1
95	NEW MILFORD	451	448	99.3	3	0.7	0.2	1	0.2	1	0.2	0	0
96	NEWINGTON	366	363	99.2	3	0.8	0	0	0	0	0	0	0
97	NEWTOWN	306	302	98.7	4	1.3	0.3	1	0.3	0	0	0	0
98	NORFOLK NORTH	11	10	90.9	1	9.1	0	0	0	0	0	0	0
99	BRAINFORD	187	186	99.5	1	0.5	0	0	0	0	0	0	0
100	NORTH CANAAN	24	24	100	0	0	0	0	0	0	0	0	0
101	NORTH HAVEN NORTH	357	354	99.2	3	0.8	0.3	1	0.3	1	0.3	1	0.3
102	STONINGTON	77	74	96.1	3	3.9	0	0	0	0	0	0	0
103	NORWALK	2,285	2,234	97.8	51	2.2	0.5	11	0.5	3	0.1	3	0.1
104	NORWICH	1,007	951	94.4	56	5.6	1.7	17	1.7	8	0.8	4	0.4
105	OLD LYME	115	112	97.4	3	2.6	0.9	1	0.9	0	0	0	0
106	OLD SAYBROOK	123	122	99.2	1	0.8	0	0	0	0	0	0	0
107	ORANGE	182	182	100	0	0	0	0	0	0	0	0	0
108	OXFORD	181	178	98.3	3	1.7	0	0	0	0	0	0	0
109	PLAINFIELD	330	321	97.3	9	2.7	0.6	2	0.6	1	0.3	0	0
110	PLAINVILLE	294	290	98.6	4	1.4	0	0	0	0	0	0	0
111	PLYMOUTH	157	155	98.7	2	1.3	0.6	1	0.6	0	0	0	0

# EXHIBIT C





# CITY OF NEW HAVEN

## DEPARTMENT OF HEALTH

### BUREAU OF ENVIRONMENTAL HEALTH

54 Meadow Street - 9<sup>TH</sup> Floor • New Haven • Connecticut 06519

Phone 203-946-8174 • Fax 203-946-6509

New Haven



2008

TONI N. HARP  
MAYOR

ROSLYN HAMILTON, R.S., MPH  
ACTING DIRECTOR OF HEALTH

COPY

July 2, 2019

Earlene F. Kelson  
Leslie Kelson  
103 Lombard Street, 1F  
New Haven, CT 06513

**CERTIFIED MAIL**

7017 3380 0000 3653 7542

7017 3380 0000 3653 7559

**RE: 105 Lombard St., 2F, New Haven, CT**

Dear Earlene F. & Leslie Kelson:

On June 26, 2019, an inspection of the above referenced premises was made by Ms. Jomika Bogan of this department.

Said inspection revealed the presence of toxic levels of lead in paint (intact and defective), i.e., paint containing more than 0.50 percent lead by dry weight as measured by atomic absorption spectrophotometer or lead at or above 1.0 milligrams per square centimeter of surface, including the dried paint film, as measured on site by x-ray fluorescence spectrum analyzer according to performance characteristic sheets, in the following locations:

**Kitchen B**

	<b><u>Lead (mg/cm<sup>2</sup>)</u></b>
1. Wall, Side A, Cream	11.1
2. Wall, Side B, Cream	12.3
3. Wall, Side C, Cream	11.2
4. Wall, Side D, Cream	12.3
5. Cabinet Wall, Side D, Cream	5.8

**Bathroom B**

6. Chair Rail, Tan	1.6
--------------------	-----

**Bathroom Hall**

7. Ceiling	AREA NOT ACCESSIBLE; ASSUME LEAD AND ABATE ACCORDINGLY
8. Wall, Side A, Cream	1.5
9. Wall, Side B, Cream	2.3
10. Wall, Side C, Cream	1.6
11. Wall, Side D, Cream	1.3
12. Wall, Side D, Cream (Cement)	1.3
13. Threshold, Side C	2.4

**Rear Common Hall**

14. 2F-1F Stairwell Ceiling, White	AREA NOT ACCESSIBLE; ASSUME LEAD AND ABATE ACCORDINGLY
------------------------------------	--

15. 2F-1F Stairwell Wall, Side C, Cream	1.0
16. 1F Ceiling, Cream	6.1
17. 1F Wall, Side B, Cream	1.2
18. 1F Wall, Side D, Cream	1.0
19. Wall Cap, Cream	1.9

**Exterior, Side A**

20. 2F Column, White	9.3
21. 2F Railing, White	7.1
22. 2F Door Casing, White	10.2
23. 2F Door Stop, Grey	15.0
24. 2F Threshold, Grey	11.2
25. 2F Kick Plate, Red	6.8
26. 2F Door, Grey	5.8
27. 1F Column, White	13.6
28. 1F Railing, Grey/White	9.6
29. 1F Door Casing, White	14.4
30. 1F Door Stop, Blue	13.01
31. 1F Door, Blue	6.7
32. 1F Threshold, Grey	12.04
33. 1F Window Panel (fascia), Blue	7.8
34. 1F Window Panel (fascia) Stop, Blue	13.3
35. 1F Kick Plate, Grey	7.1

**Exterior, Side C**

36. 2F Porch Overhang Ceiling, Grey	10.7
37. 2F Porch Door Stop, Grey	7.2
38. 2F Porch Threshold, Grey	3.9
39. 2F Porch Door, Grey	6.9
40. 1F Porch Overhang Ceiling, Grey	8.1

**Garage/Shed**

41. Door (6 Panes), White	3.4
---------------------------	-----

Said inspection also revealed the presence of cracked, chipped, blistered, flaking, loose or peeling paint in the following locations:

**Room AB**

1. Wall, Side D, Cream	0.3
------------------------	-----

**Bedroom/Closet Hall**

2. Door Stop	0.2
--------------	-----

**Rear Common Hall**

3. 2F-1F Stairwell Wall, Side B, Cream	0.8
4. 2F-1F Stairwell Wall, Side D, Cream	0.6

**Garage/Shed**

5. Window Stop, White	0.4
6. Window Sash, White	0.2
7. Bay Door Casing, White	0.0

- 8. Bay Door Stop, White
- 9. Bay Door, White

0.1  
0.0

The Director of Health has determined that the presence of such lead-based paint and chipped and flaking paint constitutes health hazards. Since there are one or more children with an elevated blood lead level residing on the premises, the aforementioned conditions constitute grounds for issuance of this Order pursuant to General Statutes §§ 19a-111 and 19a-111c, § 19a-111-2 of the Public Health Code and are a violation of Chapter 55, Article III of the New Haven Code of Ordinances, Section 55-63, Maintenance; Section 55-64, Hazardous conditions, Subsections a, b, and c.

As owner/agent-manager of the above referenced premises you are hereby ordered to remedy these conditions. A re-inspection will be made upon completion of the work.

You are additionally required to submit to Ms. Jomika Bogan a written lead abatement plan within five (5) days from receipt of this letter. The abatement work is not to begin until an abatement plan written by you has been reviewed and approved by this department. This plan shall describe repair work necessary prior to abatement, the methods to be utilized to abate all areas requiring abatement, occupant protection, work-site containment, clean up procedures, and a waste disposal plan. An abbreviated version of an abatement plan has been provided as a guide.

Notices of toxic levels of lead must be posted by you at each entrance to the dwelling unit or common area if affected within two (2) working days from receipt of this letter. The notice entitled "Warning Notice Toxic Lead Levels" included with this letter is a State Department of Public Health form that may be used for this purpose. The notices are not to be removed until the dwelling unit reaches compliance with this letter.

The above stated violations must be corrected as follows:

- Properly abate all interior and exterior lead paint.
- All holes and cracks in walls and/or ceiling must be repaired in such a manner as to create a smooth, durable, non-broken surface.
- All chipped and flaking paint, wherever it exists, must be thoroughly scraped and removed.
- All lead paint ordered to be removed shall be completely removed to the base surface.
- All doors, door jams (to include entire door system), windows (to include sills, sashes, casings, and other parts of system), baseboards, walls, etc. which contain a lead hazard must be stripped to the base surface, and all chipped and flaking paint removed to the base surface.
- In lieu of removal of paint, all violations may be covered with an approved, durable, non-lead material so as to make the area inaccessible to children.

The sample locations reported beginning from the first page of this letter are indicative of the lead content of similar painted surfaces found within each room or site, i.e., they are representative samples.

All such surfaces painted with a lead-based paint, whether intact or defective, are to be properly abated or encapsulated. Repainting a surface with a non-lead paint without the complete removal of existing lead-based paint shall not be considered satisfactory compliance with the law.

*The methods used in eliminating the cited health hazards must be approved by this office prior to commencement of work. Upon removal of this hazardous paint and prior to repainting, this office must be notified and shall then verify complete removal. As of 6 January 1996, any abatement work contracted by you must be done by a licensed lead abatement contractor.*

This order is made pursuant to the authority vested in the Director of Health by Section 19a-200 of the Connecticut General Statutes and Section 55-64 of the New Haven Code of Ordinances. Compliance with these orders is the ultimate responsibility of the owner/agent-manager and must not be delegated to the occupant-tenant.

Any children who occupy the apartment in question are to be excluded from the worksite/apartment while the lead paint abatement efforts are being performed and are not to re-enter the site until all paint chips, dust, and debris have been completely and safely cleaned from the area. In addition, all surfaces (ceilings, walls, floors, moldings, etc.) are to be thoroughly and completely washed with a high-phosphate solution. This is also the responsibility of the owner-agent. It is imperative that the health of the child not be further jeopardized by allowing access to lead paint chips, lead containing dust, and/or lead paint fumes.

Failure to comply with the above stated orders will subject you to prosecution as provided in the Connecticut General Statutes and/or City of New Haven Code of Ordinances.

No dwelling unit which is in violation of Article III, entitled "Lead Paint", shall be re-rented to a new tenant until repairs acceptable to the Director of Health have been made in compliance with the provisions of said article.

When a child resides in dwelling requiring lead abatement, interior dust, drinking water and exterior soil shall be assessed. When soil or sand areas are not covered with grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering are found to contain lead concentrations in excess of 400 parts per million, such bare soil or sand areas shall be abated. When lead dust hazards are found to be a source or a potential source of elevated blood lead in a child, lead dust shall be reduced to a safe level using appropriate cleaning methods.

When lead in drinking water is determined to be a source or a potential source of elevated blood lead in a child, appropriate remedial action approved by the local health director of health shall be implemented. Separate letters regarding possible lead in dust, soil and water may be issued to you, if necessary, once testing results are received.

The Federal Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4852d, requires sellers and landlords of most residential housing units built before 1978 to disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal.

This disclosure must occur even if hazard reduction or abatement has been completed. Failure to disclose these test results is a violation of the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency regulations at 24 CFR part 35 and 40 CFR Part 745 and can result in a fine of up to \$11,000 per violation. To find out more information about our obligations under federal lead-based paint requirements call 1-800-424-LEAD (5323).

**RIGHT OF APPEAL:** Connecticut General Statutes Sec. 19a-229 states "Any person aggrieved by an order issued by a town, city or borough director of health may appeal to the Commissioner of Public Health not later than three business days after the date of such person's receipt of such order, who shall thereupon immediately notify the authority from whose order the appeal was taken, and examine into the merits of such case, and may vacate modify, or affirm such order."

There are two ways to appeal this order; both methods require action not later than three business days after you receive the order.

- (1) You may appeal the order by delivering your written appeal to the Department not later than three business days after you receive the order. You may deliver it to the Department either in person or by facsimile. The Department's address and facsimile number are:

Department of Public Health  
Public Health Hearing Office  
410 Capitol Avenue MS 13 PHO  
P.O. Box 340308  
Hartford, CT 06134-0308  
Facsimile: (860) 509-7553

If you chose this method of appeal, you need do nothing more to perfect your appeal, unless instructed otherwise by the Department.

(2) You may also appeal the order by *calling the Department not later than three business days after receipt of the order* at one of the following numbers: (860) 509-7648 or (888) 891-9177. It is sufficient to leave a message with your name, number and a description of the order you are appealing.

*If you appeal the order by calling one of the telephone numbers listed above, the telephone call must be followed up with a written notice of appeal that must be received by the Department within ten days of the telephonic notice.*

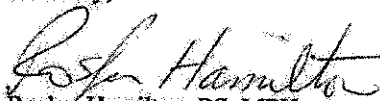
**PLEASE NOTE:** It is *not* sufficient that the written notification be postmarked within ten days. It must be *received by the department within ten days*. Delays caused by the Post Office will not excuse failure to comply with this requirement.

The written notice of appeal following the telephonic notice may be delivered to the Department in person, by facsimile, or by first class or certified mail. The Department's address and facsimile number are provided above. If you chose to send the written notice of appeal by first class mail or certified mail, please use the address provided below.

Department of Public Health  
Public Health Hearing Office  
410 Capitol Avenue MS 13 PHO  
P.O. Box 340308  
Hartford, CT 06134-0308

Please direct any inquiries to Ms. Jomika Bogan at (203) 946-8176.

Sincerely,

  
Roslyn Hamilton, RS, MPH  
Acting Director of Health

RH: jhb

cc: City Town Clerk  
Tenant

# EXHIBIT D



EXHIBIT

2

Exhibit D





EXHIBIT

tabbles

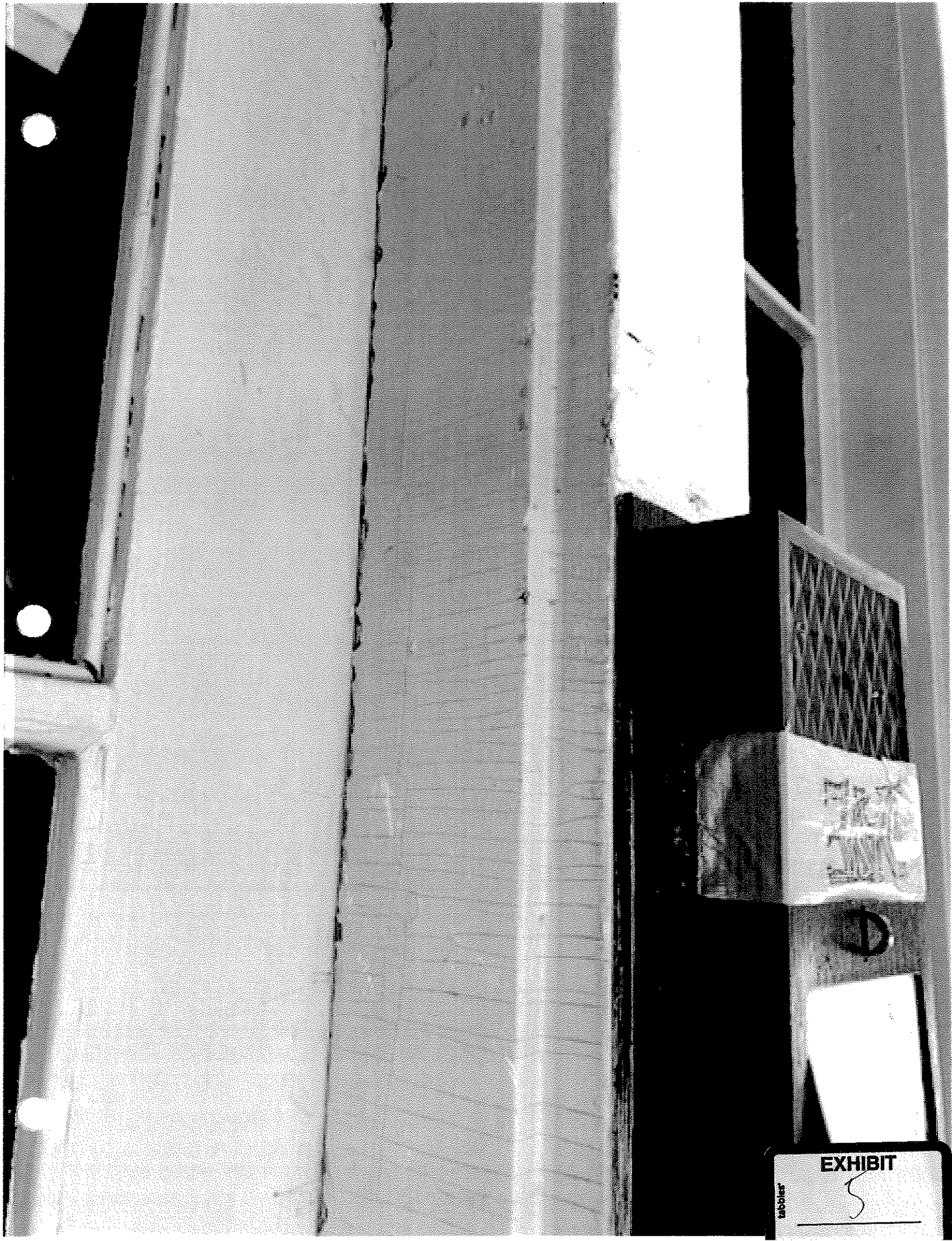




EXHIBIT

tabbler

4



EXHIBIT

5

tabbies

# EXHIBIT E





Environmental Hazards Services, L.L.C.

7469 Whitepine Rd

Richmond, VA 23237

Telephone: 800.347.4010

## Lead Dust Wipe Analysis Report

Report Number: 19-06-04393

Received Date: 06/27/2019

Analyzed Date: 06/27/2019

Reported Date: 06/27/2019

Client: New Haven Env Health Department  
54 Meadow St. 9F  
New Haven, CT 06519

Project/Test Address: 105 Lombard St 2F; New Haven, CT 06573

Collection Date: 06/26/2019

Client Number:  
07-5774

## Laboratory Results

Fax Number:  
203-946-6509

Lab Sample Number	Client Sample Number	Collection Location	Surface	Total Pb (ug)	Wipe Area (ft <sup>2</sup> )	Concentration (ug/ft <sup>2</sup> )	Narrative ID
19-06-04393-001	1	ROOM AB	WW	50.4	0.250	202	
19-06-04393-002	2	ROOM AB	SL	11.9	0.250	47.6	
19-06-04393-003	3	ROOM AB	FL	<5.00	1.00	<5.00	
19-06-04393-004	4	ROOM B	WW	5.48	0.250	21.9	
19-06-04393-005	5	ROOM B	SL	15.1	0.250	60.6	
19-06-04393-006	6	ROOM B	FL	<5.00	1.00	<5.00	
19-06-04393-007	7	MIDDLE ROOM B	WW	6.58	0.250	26.3	
19-06-04393-008	8	MIDDLE ROOM B	SL	9.56	0.250	38.2	
19-06-04393-009	9	MIDDLE ROOM B	FL	<5.00	1.00	<5.00	
19-06-04393-010	10	ROOM BC	WW	<5.00	0.250	<20.0	
19-06-04393-011	11	ROOM BC	SL	<5.00	0.250	<20.0	
19-06-04393-012	12	ROOM BC	FL	<5.00	1.00	<5.00	
19-06-04393-013	13	KITCHEN B	WW	42.2	0.250	169	
19-06-04393-014	14	KITCHEN B	SL	9.84	0.250	39.4	

# Environmental Hazards Services, L.L.C

Client Number: 07-5774

Report Number: 19-06-04393

Project/Test Address: 105 Lombard St 2F; New Haven, CT 06573

Lab Sample Number	Client Sample Number	Collection Location	Surface	Total Pb (ug)	Wipe Area (ft²)	Concentration (ug/ft²)	Narrative ID
19-06-04393-015	15	KITCHEN B	FL	<5.00	1.00	<5.00	
19-06-04393-016	16	BATHROOM B	WW	<5.00	0.250	<20.0	
19-06-04393-017	17	BATHROOM B	SL	<5.00	0.250	<20.0	
19-06-04393-018	18	BATHROOM B	FL	38.3	1.00	38.3	
19-06-04393-019	19	BEDROOM CLOSET HALL	FL	<5.00	1.00	<5.00	
19-06-04393-020	20	BATH HALL	FL	<5.00	1.00	<5.00	
19-06-04393-021	21	1F FOYER	FL	<5.00	1.00	<5.00	
19-06-04393-022	22	1F-2F FRONT STAIRS	FL	<5.00	1.00	<5.00	
19-06-04393-023	23	2F FRONT LANDING	FL	9.46	1.00	9.46	
19-06-04393-024	24	REAR HALL	FL	5.76	1.00	5.76	
19-06-04393-025	25	BLANK 1		<5.00	—	—	
19-06-04393-026	26	BLANK 2		<5.00	—	—	
19-06-04393-027	27	BLANK 3		<5.00	—	—	

# Environmental Hazards Services, L.L.C

Client Number: 07-5774

Report Number: 19-06-04393

Project/Test Address: 105 Lombard St 2F; New Haven, CT 06573

Lab Sample Number	Client Sample Number	Collection Location	Surface	Total Pb (ug)	Wipe Area (ft <sup>2</sup> )	Concentration (ug/ft <sup>2</sup> )	Narrative ID
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Method: ASTM E-1979-17/EPA SW846 7000B

Accreditation #: CT PH-0234

Reviewed By Authorized Signatory:

*Melissa Kanode*

Missy Kanode

QA/QC Clerk

The Federal lead guidelines for dust clearance levels by wipe sampling: Floors (FL) - 40 ug/ft<sup>2</sup>, Interior Window Sills (SL) - 250 ug/ft<sup>2</sup>, Window Wells (WW) - 400 ug/ft<sup>2</sup>.

Effective April 1, 2017 all existing Office of Lead Hazard Control and Healthy Homes (OLHCHH), Lead Based Paint Hazard Control (LBPHC), and Lead Hazard Reduction (LHRD) grantees will use the following dust-lead action levels and clearance action levels (or lower levels if required by local, state or tribal authorities having jurisdictions):

Dust-Lead Action Levels: Floors (FL) -  $\geq 10$  ug/ft<sup>2</sup>, Window Sills (SL) -  $\geq 100$  ug/ft<sup>2</sup>

Lead Clearance Action Levels: Interior Floors (FL) -  $< 10$  ug/ft<sup>2</sup>, Porch Floors (PFL) -  $< 40$  ug/ft<sup>2</sup>  
Window Sills (SL) -  $< 100$  ug/ft<sup>2</sup>, Window Troughs (WW) -  $< 100$  ug/ft<sup>2</sup>

The Reporting Limit (RL) is 5.00 ug Total Pb. Reported results are not corrected for field blanks. Dust wipe area and results are calculated based on area measurements determined by the client. All internal quality control requirements associated with this batch were met, unless otherwise noted.

The condition of the samples analyzed was acceptable upon receipt per laboratory protocol unless otherwise noted on this report. Results represent the analysis of samples submitted by the client. Sample location, description, area, etc., was provided by the client. Results reported above in ug/ft<sup>2</sup> are calculated based on area supplied by the client. If the report does not contain the result for a field blank, it is due to the fact that the client did not include a field blank with their samples. EHS sample results do not reflect blank correction. This report shall not be reproduced except in full, without the written consent of the Environmental Hazards Services, L.L.C.

ELLAP Accreditation through AIHA-LAP, LLC (100420), NY ELAP #11714.

Legend	ug = microgram	ug/ft <sup>2</sup> = micrograms per square foot	Pb = lead
	ml. = milliliter	ft <sup>2</sup> = square foot	

# EXHIBIT F



Environmental Hazards Services, L.L.C.

7469 Whitepine Rd

Richmond, VA 23237

Telephone: 800.347.4010

## Lead Dust Wipe Analysis Report

Report Number: 19-07-01141

Client: New Haven Env Health Department  
54 Meadow St. 9F  
New Haven, CT 06519

Received Date: 07/08/2019

Analyzed Date: 07/08/2019

Reported Date: 07/08/2019

Project/Test Address: 105 Lombard St.; New Haven, CT

Collection Date: 07/03/2019

Client Number:  
07-5774

## Laboratory Results

Fax Number:  
203-946-6509

Lab Sample Number	Client Sample Number	Collection Location	Surface	Total Pb (ug)	Wipe Area (ft <sup>2</sup> )	Concentration (ug/ft <sup>2</sup> )	Narrative ID
19-07-01141-001	1	2F FRONT PORCH	FL	<5.00	1.00	<5.00	
19-07-01141-002	2	3F REAR LANDING	FL	<5.00	1.00	<5.00	
19-07-01141-003	3	1F REAR ENCLOSED PORCH	FL	5.56	1.00	5.56	
19-07-01141-004	4	1F REAR LANDING	FL	<5.00	1.00	<5.00	
19-07-01141-005	5	2F REAR PORCH	FL	<5.00	1.00	<5.00	
19-07-01141-006	6	BLANK #1		<5.00	—	—	
19-07-01141-007	7	BLANK #1		<5.00	—	—	



# Environmental Hazards Services, L.L.C

Client Number: 07-5774

Report Number: 19-07-01141

Project/Test Address: 105 Lombard St.; New Haven, CT

Lab Sample Number	Client Sample Number	Collection Location	Surface	Total Pb (ug)	Wipe Area (ft <sup>2</sup> )	Concentration (ug/ft <sup>2</sup> )	Narrative ID
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Method: ASTM E-1979-17/EPA SW846 7000B

Accreditation #: CT PH-0234

Reviewed By Authorized Signatory:



Deborah Britt

QA/QC Clerk

The Federal lead guidelines for dust clearance levels by wipe sampling: Floors (FL) - 40 ug/ft<sup>2</sup>, Interior Window Sills (SL) - 250 ug/ft<sup>2</sup>, Window Wells (WW) - 400 ug/ft<sup>2</sup>.

Effective April 1, 2017 all existing Office of Lead Hazard Control and Healthy Homes (OLHCHH), Lead Based Paint Hazard Control (LBPHC), and Lead Hazard Reduction (LHRD) grantees will use the following dust-lead action levels and clearance action levels (or lower levels if required by local, state or tribal authorities having jurisdictions):

Dust-Lead Action Levels: Floors (FL) -  $\geq 10$  ug/ft<sup>2</sup>, Window Sills (SL) -  $\geq 100$  ug/ft<sup>2</sup>

Lead Clearance Action Levels: Interior Floors (FL) -  $< 10$  ug/ft<sup>2</sup>, Porch Floors (PFL) -  $< 40$  ug/ft<sup>2</sup>

Window Sills (SL) -  $< 100$  ug/ft<sup>2</sup>, Window Troughs (WW) -  $< 100$  ug/ft<sup>2</sup>

The Reporting Limit (RL) is 5.00 ug Total Pb. Reported results are not corrected for field blanks. Dust wipe area and results are calculated based on area measurements determined by the client. All internal quality control requirements associated with this batch were met, unless otherwise noted.

The condition of the samples analyzed was acceptable upon receipt per laboratory protocol unless otherwise noted on this report. Results represent the analysis of samples submitted by the client. Sample location, description, area, etc., was provided by the client. Results reported above in ug/ft<sup>2</sup> are calculated based on area supplied by the client. If the report does not contain the result for a field blank, it is due to the fact that the client did not include a field blank with their samples. EHS sample results do not reflect blank correction. This report shall not be reproduced except in full, without the written consent of the Environmental Hazards Services, L.L.C.

ELLAP Accreditation through AIHA-LAP, LLC (100420), NY ELAP #11714.

Legend	ug = microgram	ug/ft <sup>2</sup> = micrograms per square foot	Pb = lead
	mL = milliliter	ft <sup>2</sup> = square foot	

# EXHIBIT G

# City of New Haven

**Toni N. Harp – Mayor**



Good afternoon, everybody. Welcome to City Hall – thank you for being here for today’s important announcement about a very serious, complex policy issue the City continues working to address.

Let me first remind you of New Haven’s proud reputation as a ground-breaking guardian of children’s health as it relates to exposure to lead. In 1974, New Haven banned lead paint: four years before the federal government got around to doing so.

Fast-forward some 20 years, to the mid-1990s, at about the time I was starting my 20-year tenure as a state Senator from New Haven.

At that time, the city launched an aggressive public awareness, inspection, and abatement program using a combination of state and federal funding.

I’m very proud of my record over the 20 years that followed, helping direct state resources to help underwrite these ongoing, local efforts.

And now fast-forward to today, when, as mayor, I announce a comprehensive, five-point plan to once again move New Haven forward on the issue, reaffirming the city’s record and declaring my intention to make New Haven known as Connecticut’s ‘lead-safe’ city.

Anyone who says the City of New Haven has been negligent on this issue doesn’t know its history or seems willing to distort it.

And going forward, there will be no more questions about the city’s response to cases of illness when exposure to lead is suspected.

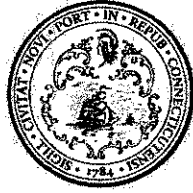
With that said, the City ‘has’ been challenged to defend its standards, practices, and protocol in recent months, in a spate of court cases.

And even as the City defended its long-standing, consistent intentions to mitigate the danger of lead exposure in New Haven residential units, evidence has emerged to suggest potential ambiguities in the city’s lead paint ordinance, and perhaps some inconsistencies in the city’s response to cases of lead-related illness as a result.

One of these recent cases prompts today’s press announcement: the City had a deadline today to appeal a recent court injunction handed down regarding a specific case at a specific address.

# City of New Haven

Toni N. Harp – Mayor



And even though a recent inspection at that address turned up no lead accessible to children inside the apartment, suggesting the child's exposure was elsewhere, perhaps even in some other jurisdiction, the City will not appeal that injunction.

Instead, I announce this as the first of my five-point plan to advance the city's case against lead exposure: the city will use this recent spate of lawsuits as a springboard to refine its ordinance, eliminate any potential ambiguity in its language, and go forward with a plan of action triggered by a blood-level of five micrograms per deciliter, even as state law requires action at 20.

My team has already been working with Aldermanic leadership to prepare them for proposed, amended language, to be communicated later this month with hopes the Board's review process will begin right away in August.

The second part of the plan: personnel adjustments in the city's health department, to include a national search to fill the vacant director's position with someone who has a proven record in this area of lead exposure mitigation.

In the shorter term on the personnel front, we're exploring the possibility of hiring a consultant or specialist on a contract basis to help with the city's program – again, for the short term.

The third aspect of the plan is fortification of the city's lead inspection protocol, with more inspectors on the street to start bringing technology into the field in the form of electronic tablets, to standardize inspections, create digital records, and provide clear communications to all applicable city departments.

The fourth component of my plan is a revitalized outreach, awareness, and education program to engage parents, landlords, and property owners about THEIR responsibility in preventing lead exposure. The city must have these engaged partners going forward to maintain that first degree of separation between children and lead.

For instance, it is already against state law for landlords or property management companies to rent units with identified lead hazards to families with children under the age of six years.

The mandate of this law must be broadcast from New Haven rooftops so compliance with this first line of defense is administered with every single apartment rental agreement and signed lease.

And the fifth pillar upon which this plan rests is the financial component.

# City of New Haven

**Toni N. Harp – Mayor**



Once again, working with our partners on the Board of Alders, the city will prepare to meet its responsibility regarding inspection cost, underwriting lead abatement projects if necessary, and relocating families ‘as’ necessary during any abatement projects.

My financial team is already working to expand an existing program in which a ‘lien’ is placed on property requiring abatement, exploring how a revolving loan fund might work to underwrite these projects, or perhaps bringing state or federal resources to bear.

This last point became self-evident as soon as we likened New Haven’s potential lead exposure in housing stock, estimated to be some 20,000 units, with sinking homes in other parts of the city, crumbling foundations in other parts of the state, and other enormous challenges no city can be expected to bear on its own.

In a curious irony, the City of New Haven has New Haven Legal Assistance, its legal opponent in recent lead exposure cases, to thank for questioning what I described a few minutes ago: potential ambiguities in the city’s lead paint ordinance, and perhaps some inconsistencies that result in the city’s response to lead-related illness.

I think we can all agree: the most important take-away from these disagreements is a clear path forward to safeguard the well-being of children in New Haven.

Finally, all of us gathered this afternoon should remain certain of several things.

First, New Haven’s commitment to protecting children from lead exposure has never wavered, from its first ban of lead paint in 1974 to its 25-year-old public awareness, inspection, and abatement program, to its extraordinary action plan at five micrograms per deciliter – far surpassing the state standard of 20.

Second, New Haven’s decades-long commitment on this issue has resulted in a declining number of lead exposure illnesses – so much so, in fact, that Yale/New Haven Hospital closed its lead clinic several years ago.

For those looking for numbers to underscore this progress: in 2016, there were 228 children reported with blood levels in the five to nine range.

That number dropped to 171 in 2017, and then it dropped again to 104 in 2018. The plan I’ve outlined today will hasten progress already underway.

# City of New Haven

**Toni N. Harp – Mayor**



The third thing to be certain about, going forward, is this: New Haven will continue setting the standard on this important policy issue, now with every intention of making New Haven known as Connecticut's 'lead-safe' city.

Dr. Dakibu Muley, the city's Community Services Administrator, and City Controller Daryl Jones are here with me to try and answer any questions. Thank you again for being here today.

Dr. Muley?

###

# EXHIBIT H

# City of New Haven

Toni N. Harp – Mayor



PRESS RELEASE

For IMMEDIATE RELEASE  
July 16, 2019

Contact: Laurence Grotheer  
203-946-7660 (o); 203-676-6103 (c)

## CITY ATTORNEYS FILE MOTIONS HIGHLIGHTING FLAWS IN LEAD CASE; CITY CONTINUES PROCESS TO AMEND LEAD PAINT ORDINANCE

New Haven – City attorneys filed two motions today in connection with the matter known as Smith vs. City of New Haven pending before Judge John L. Cordani of the Superior Court/Housing Session. The City's motions address flaws in the Legal Assistance Association's (LAA) pleadings in the matter purporting to seek class action status for New Haven children exposed to sources of toxic lead.

Although Mayor Harp has publicly committed to and begun the process of implementing the relief requested by LAA, which includes inspection of the homes of any child under the age of six with a blood lead level equal to or greater than five micrograms per deciliter of whole blood, the case remains pending; the City took action today to preserve its right to complete the legislative and administrative processes necessary to implement new policy.

"The City is embroiled in this litigation because a policy was originally implemented without seeking or documenting proper authorization and without consideration of available resources. As we clarify the City's policies and procedures, it is my intention to do so in an orderly, sequential fashion." Mayor Harp said. "I reached out to the Legal Assistance Association requesting reasonable breathing room for the City to complete its process. That overture resulted in demands from Attorney Marx that significantly exceed the original request for relief and are most appropriately addressed by the Board of Alders and the City's Health Department."

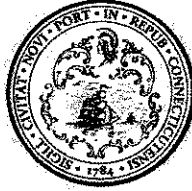
The Board of Alders awaits proposed comprehensive changes to the ordinance, which it anticipates considering at its August meeting. The City's Health Department is developing clear policies and procedures to implement inspections as promised by Mayor Harp. Those policies will be finalized following completion of the Alders' legislative process.

"I want to see the City's resources, both human and financial, focused on the children," said Mayor Harp. "That is why I decided not to appeal Judge Cordani's decision."



# City of New Haven

Toni N. Harp – Mayor



## PRESS RELEASE

The Legal Assistance Association's motion for Class Certification is overly broad, city attorneys argued. The City's motion in opposition filed today further details the material flaws and the need for clarity.

"I would like to have the Legal Assistance Association as a partner in addressing this public health issue – we all have an interest in making New Haven a lead-safe city," Mayor Harp added.

To accomplish Mayor Harp's lead-safe goal, the City will need to coordinate with health care providers, state and federal public health agencies, and community advocates.

As recommended by the Centers for Disease Control and Prevention, education is the first action for preventing child exposure to lead toxins. The City wishes to help parents and landlords understand how they can prevent childhood lead poisoning. The City's Health Department will be vigilant but will avoid being alarmist.

All chipping or peeling paint is not lead-based. For example, although lead paint was found on the premises where the named plaintiff in the Legal Assistance Association's lawsuit lives, all such paint is intact. Proper abatement of such intact lead-based paint can include encapsulating the surface with a liquid encapsulant such as "lead-bloc" and similar products approved by the Connecticut Department of Public Health.

No defective lead-based paint was found in the apartment of the named plaintiff. None of the window frames, typical "chewable" surfaces, was found to contain lead.

In his decision, Judge Cordani stated that the court "studiously avoided substituting its substantive judgments for those of the legislative body" and suggested that the City amend its ordinance. The City has taken this advice seriously and is carefully, thoughtfully and comprehensively reviewing the law to make appropriate changes in accordance with the legislative process.

###

# EXHIBIT I

NO. CV: NHH-CV19-5003875-S

NYRIEL SMITH,  
BY AND THROUGH HER MOTHER  
AND LEGAL GUARDIAN  
NICHELLE HOBBY;

: SUPERIOR COURT/  
HOUSING SESSION

: JUDICIAL DISTRICT  
: OF NEW HAVEN

MUHAWENIMANA SARA,  
BY AND THROUGH HER FATHER  
AND LEGAL GUARDIAN  
RUKARA RUGEREZA;

vs.

CITY OF NEW HAVEN, ET AL.

: JULY 19, 2019

**AFFIDAVIT OF AMY D. MARX IN SUPPORT OF**  
**MOTION FOR CLASS CERTIFICATION**

Amy D, Marx, an attorney duly admitted to practice law in the State of Connecticut and before this Court, hereby affirms subject to the penalties of perjury as follows:

1. I am co-counsel for the Named Plaintiffs and proposed class in the above-entitled case.

2. I am a staff attorney in the housing unit at New Haven Legal Assistance Association, Inc. (NHLAA) and I have held this position since 2002. As a staff attorney, I represent clients in administrative hearings, state housing courts, state appellate courts, and federal courts. I submit this affidavit in support of my qualifications to represent the plaintiff class in the above action.

3. I graduated with a J.D. from Yale Law School, New Haven, Connecticut, in June 2000. I was a staff member of the *Yale Law Review*. I practiced in New Haven Housing Court as a law student intern through the Jerome N. Frank Legal Services Organization, receiving the C. LaRue Munson Award for excellence in work on clinical cases. I attended Stanford

University, graduating Phi Beta Kappa in 1994. I was awarded a Marshall Scholarship, in 1994, through which I earned two masters degrees in the United Kingdom.


4. After graduating from law school, I clerked for the Honorable Kimba M. Wood of the U.S. District Court for the Southern District of New York. I was admitted to practice in Connecticut state and federal courts in 2001.

5. In 2018, I was awarded the Connecticut Law Tribunes' Distinguished Leaders of the Law Award.

6. I have experience in class action cases, including *Wilkins v. Housing Authority of the City of New Haven*, 3:11-cv-01796-CSH (filed Nov. 18, 2011) (challenge to public housing authority's noncompliance with requirements for minimum rent for public housing tenants) and *Karen L. Physicians Health Services v. Department of Social Services*, 202 F.R.D. 94 (D. Conn. 2001)(§ 1983 action brought by Medicaid managed care enrollees against managed care organization and Commissioner of Connecticut Department of Social Services alleging that delays in informing them of adverse actions taken in regard to coverage claims violated federal Medicaid statute and Due Process Clause).

7. I also have extensive experience litigating injunctions and other civil cases involving New Haven city lead ordinances and Health Department lead policies and practices, including *Juanita Sumler v. Mt. Bethel Missionary Baptist Church*, NHH-CV-17-5001853; *Jacob Guaman v. City of New Haven, et al.*, NHH-CV-17-5040434; *Guaman v. Heo*, NHH-CV-17-5002277; *Elijah Hall v. City of New Haven, et al.*, NHH-CV-18-5003008; *T.J. Mims v. City of New Haven et al.*, NHH-CV-18-5003044; *Soliman v. Mohammed*, NHH-CV-18-5002790.

DATE: 7/19/19

  
Amy D. Marx

# EXHIBIT J

NYRIEL SMITH,  
BY AND THROUGH HER MOTHER  
AND LEGAL GUARDIAN  
NICHELLE HOBBY;

: SUPERIOR COURT/  
HOUSING SESSION  
  
: JUDICIAL DISTRICT  
: OF NEW HAVEN

MUHAWENIMANA SARA,  
BY AND THROUGH HER FATHER  
AND LEGAL GUARDIAN  
RUKARA RUGEREZA;

vs.

CITY OF NEW HAVEN, ET AL.

: JULY 19, 2019

**AFFIDAVIT OF SHELLEY A. WHITE IN SUPPORT OF**  
**MOTION FOR CLASS CERTIFICATION**

Shelley A. White, an attorney duly admitted to practice law in the State of Connecticut and before this Court, hereby affirms subject to the penalties of perjury as follows:

1. I am co-counsel for the named plaintiffs and proposed class in the above-entitled case.
2. I am the Director of Litigation and Advocacy for New Haven Legal Assistance Association, Inc. (NHLAA) and I have held this position since 1987. As the Litigation Director, I co-counsel and supervise all the work our attorneys do in federal court, both in the United States District Court for the District of Connecticut and the Second Circuit Court of Appeals. I also co-counsel and supervise all work in the Connecticut appellate courts and generally review the affirmative and systemic legal work of our staff attorneys and paraprofessionals. I submit this affidavit in support of my qualifications to represent the plaintiff class in the above action.
3. I graduated with a J.D. magna cum laude, Order of the Coif, from Boston College Law School, Newton, Massachusetts, in May, 1977. I was a staff member of the *Environmental*

*Affairs* law review. I attended the University of Virginia, 1970-74, graduating Phi Beta Kappa with a Bachelor of Arts with Highest Honors in 1974.

4. I was admitted to practice in Georgia in 1977 (presently inactive) and I was admitted to practice in Connecticut in 1980.

5. Since 2001, I have been a James Cooper Fellow with the Connecticut Bar Foundation.

6. For the last 25 years, I have trained legal services attorneys nationally in an Affirmative Litigation training program that I helped to write. The most recent Affirmative Litigation training was conducted this past April by the Shriver Center for Poverty Law in Ohio and involved legal services attorneys from around the country.

7. In 1994, Attorney Amy Eppler-Epstein and I were awarded The David H. Neiditz Professional Writing Award, 1994 (for best appellate brief in a Connecticut case). The case, *Hilton v. City of New Haven*, 233 Conn. 701 (1995), raised the issue of a state constitutional right to shelter.

8. In April 2017, I was awarded the Charles Parker Legal Services Award by the Connecticut Bar Association.

9. I have extensive experience in federal and state court litigation, including substantial work in class action cases. Some cases of particular significance, in which I was lead counsel or played a significant role as co-counsel, include:

Federal Court:

Shafer v Bremby, 3:12-cv-00039-AWT (filed 1/9/12) **Class action** challenging failure of Department of Social Services to promptly and timely process applications for Medicaid for low income Connecticut residents. Settlement Agreement approved on September 23, 2014 and I continue monitoring the settlement agreement. (co-counsel)

Wilkins v Housing Authority of the City of New Haven 3:11-cv-01796-CSH (filed 11/18/2011). **Class action** challenge to public housing authority's noncompliance with requirements for minimum rent for public housing tenants. Case voluntarily dismissed in accordance with the terms of the parties' Settlement Agreement, as modified on October 31, 2013 and as approved by the court. (co-counsel)

Valley Housing LP v. City of Derby, 802 F.Supp.2d 359 (D.Conn. 2011) Challenge by non-profit developer to denial of zoning approval due to intentional discrimination on the basis of the disability status of prospective tenants. Ruling, after bench trial, in favor of the plaintiff, zoning relief granted and approximately \$1,000,000 awarded in damages, interest on damages, and attorney's fees. (co-counsel with Attorney David Rosen)

Rabin v. Wilson-Coker, 362 F.3d 190 (2004), 2004 WL 596090, (2<sup>nd</sup> Cir, 2004) reversing 266 F.Supp.2d 332. **Class action** challenging failure of Department of Social Services to provide Transitional Medicaid Assistance to working families when they became ineligible for family Medicaid following changes in the state's income eligibility limits for Medicaid. Medicaid rights preserved for class (federal District Court and Second Circuit Court of Appeals; co-counsel in district court, lead appellate counsel)

Karen L. Physicians Health Services, 202 F.R.D. 94 (D.Conn. 2001)(decision on class certification) Medicaid managed care enrollees brought § 1983 action against managed care organization and Commissioner of Connecticut Department of Social Services alleging that delays in informing them of adverse actions taken in regard to coverage claims violated federal Medicaid statute and Due Process Clause (co-counsel with Connecticut Legal Services) Case settled.

NAACP v. Housing Authority of the City and Town of Milford, Civ. No. 396 cv 0118 (DConn. 1995)(AHN). Challenge, under federal Fair Housing Act and Constitution, to City and Housing Authority's actions to rescind participation in a scattered site public housing program for which funding had been approved by HUD as a result of subsequent public opposition to the acquisition of such housing. Settlement Agreement approved by Court, October, 1998. United States Department of Justice filed and litigated companion case.(co-counsel with the ACLU of CT) Case settled.

Christian Community Action v. Kemp, United States District Court Civ. No. 391cv00296 (D.Conn. 1991)(AVC). **Class action** challenge, under federal Fair Housing Act and Civil Rights Act of 1964 and Constitution, to location of public housing units in racially impacted areas of the City of New Haven. Settlement Agreement with HUD and Housing Authority approved by federal district court July 7, 1995. Subsequent Settlement Agreement with City approved by district court July, 1999. Monitored compliance until 2010. (co-counsel with ACLU of CT)

Ward v. Thomas, 895 F.Supp.401 (D.Conn. 1995) Class action lawsuit challenging reductions in AFDC benefits without adequate notice and improper attribution of housing subsidy income to public housing recipients and other recipients of federal housing subsidies. Preliminary injunctive relief and attorney's fees granted. See also, 9 F.Supp.



2d 109 (D.Conn.1998) rev'd 207 F.3d 114 (2d Cir. Mar 24, 2000)(related issue) (co-counsel with Yale Law School clinical program)

Mont v. Heintz, 849 F.2d 704 (2d Cir. 1988)(holding that suit against state officials under 42 U.S.C. Sec. 1983 for violation of federal law not barred by Eleventh Amendment)(appellate counsel)

Wilkinson v. Forst, 832 F.2d 1330 (2d Cir. 1987) affirming in part, reversing in part 639 F.Supp. 518 (D.Conn. 1986)(challenge to indiscriminate searches at political rallies)(trial counsel and lead appellate counsel)

#### Connecticut Supreme and Appellate Court:

Presidential Village, LLC v. Tonya Perkins, 332 Conn. 45 (2019). Landlord appeal of judgment of dismissal based on defective pretermination notice issued to federally-subsidized tenant. Appellate Court reversed dismissal but Supreme Court granted cert and reversed Appellate Court decision thereby affirming dismissal. (co-counsel on appellate briefs).

Presidential Village, LLC v Melissa Phillips 325 Conn. 394 (2017) Landlord appeal of judgment in favor of pro-se tenant on equitable grounds. Decision reversed and remanded but tenant retained housing on remand (argued appeal and wrote brief)

In Re Lucas K. 300 Conn. 463 (2011)(challenge to termination of parental rights of incarcerated parent who was not afforded opportunity to respond to mother's case presented in his absence)(Argued appeal and wrote brief).

Edgewood Village Inc. v. Housing Authority of the City of New Haven, 265 Conn. 280 (2003). Represented tenant in scattered site public housing unit in challenge by neighbors to the procedures used by Housing Authority's acquisition of her home. Supreme Court upheld dismissal of neighbor's suit on the grounds that, because they suffered no legal harm, they had no standing to challenged alleged violations of public notice requirements. (Argued appeal and wrote brief)

State v Denby, 235 Conn. 477 (1995). Represented criminal defendant appealing conviction on sale of drugs within 1,000 feet of a school. Supreme Court held that the state is required to prove that the defendant intended to sell or dispense those drugs in his or her possession at a specific location, which location happens to be within 1000 feet of an elementary or secondary school. (Argued appeal and wrote brief)

Hilton v. City of New Haven, 233 Conn. 701 (1995). **Class action** challenge to closure of emergency housing by City as violating right to shelter secured to indigent, homeless, persons by the Connecticut state constitution. (co-counsel)

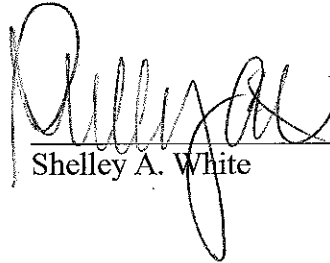
In Re Baby Girl B., 224 Conn. 263 (1992). Defense of state appeal of trial court decision to reopen termination of parental rights as being untimely. Connecticut Supreme Court

held that state had waived its timeliness claim and that no grounds were established for termination of parental rights. (co-counsel)

Connelly v. Housing Authority, 213 Conn. 263 (1992). Challenge to the applicability of the Connecticut Unfair Trade Practices Act to municipal housing authority's failure to properly maintain rental units. Supreme Court held that Act was not applicable to municipal housing authorities. (Argued appeal and wrote brief)

Campbell v. Board of Education, 193 Conn. 93 (1984). Class action challenge to school board policy of automatically reducing grades and denying course credit to students absent from school. Supreme Court held that policy was permissible exercise of statutory authority. (Argued appeal and wrote brief)

DATE: 7/19/19



Shelley A. White